

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

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**RESPONSE OF U.S. BANK TO OMNIBUS REPLY OF  
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD  
OF PUERTO RICO IN SUPPORT OF URGENT MOTION FOR ENTRY OF AN ORDER  
UNDER BANKRUPTCY RULES 1007(i) AND 2004 AUTHORIZING DISCOVERY AND  
COMPELLING DISCLOSURE OF LISTS OF SECURITY HOLDERS**

U.S. Bank National Association (“USBNA”) and U.S. Bank Trust National Association (“USBTNA”, and collectively with USBNA, “U.S. Bank”), by and through their undersigned counsel, hereby file this further objection relating to the Financial Oversight and Management Board’s (the “Oversight Board”) *Omnibus Reply in Support of the Financial Oversight and Management Board of Puerto Rico’s Urgent Motion for Entry of an Order Under Bankruptcy Rules 1007(i) and 2004 Authorizing Discovery and Compelling Disclosure of Lists of Security Holders* (the “Omnibus Reply”) (Dkt. No. 6248), and respectfully state as follow:

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780- LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

## **BACKGROUND**

1. U.S. Bank incorporates by reference the background outlined in the *Objection of U.S. Bank to the Urgent Motion of the Financial Oversight and Management Board of Puerto Rico's for Entry of an Order Under Bankruptcy Rules 1007(i) and 2004 Authorizing Discovery and Compelling Disclosure of Lists of Security Holders* (Dkt. No. 6193) (the “Objection”).

2. On April 8, 2019, the Oversight Board, acting by and through its Special Claims Committee (the “Special Claims Committee”), filed the *Urgent Motion of the Financial Oversight and Management Board of Puerto Rico for Entry of an Order Under Bankruptcy Rules 1007(i) and 2004 Authorizing Discovery and Compelling Disclosure of Lists of Security Holders* (Dkt. No. 6143) (the “2004 Motion”).<sup>2</sup> U.S. Bank filed its Objection on April 12, 2019, and the Oversight Board filed the Omnibus Reply on April 15, 2019. By an Order dated April 16, 2019 (Dkt. No. 6292), Judge Dein allowed further briefing from U.S. Bank and the other financial institutions who objected to the 2004 Motion (collectively, the “Objecting Parties”) relating to the revised proposed order to the 2004 Motion that the Oversight Board filed with the Omnibus Reply (the “Revised Proposed Order”).

## **OBJECTION TO 2004 MOTION AND REVISED PROPOSED ORDER**

3. The Revised Proposed Order submitted by the Oversight Board with its Omnibus Reply does address some of the objections raised by U.S. Bank, but is still deficient for several reasons initially outlined in U.S. Bank’s Objection to the 2004 Motion: it does not provide sufficient time to produce all of the information requested in the 2004 Motion, it does not provide adequate confidentiality protections relating to such information, and it does not address

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<sup>2</sup> Capitalized terms used but not defined herein shall have such meanings ascribed to them in the 2004 Motion.

the costs incurred by the financial institutions in responding to such information requests on the expedited time frame in which the Oversight Board sought this relief.

4. The Revised Proposed Order sets a new deadline of April 22, 2019 to comply with the Oversight Board's discovery requests. This extension, which is over a holiday weekend, still does not provide U.S. Bank sufficient time to provide all of the requested information. Although U.S. Bank should be able to provide a material portion of the requested information by the deadline, there is some information that will need to be derived manually from U.S. Bank's records and will take additional time. Therefore, U.S. Bank reiterates its request to this Court for a rolling deadline for the production of documents.

5. While the Revised Proposed Order does include certain language proposed by U.S. Bank addressing confidentiality and privacy issues with the production of sensitive customer/consumer information, the language is incomplete and requires further additions to satisfy outstanding concerns. U.S. Bank requests that the final order include the following additional language protecting the banks in connection with their compliance with the order:

To the extent any federal, state or foreign law or other legal authority governing the disclosure or use of Confidential Information, including personal data or non-public personal financial information, permits disclosure of such information pursuant to an order of a court, this Order shall constitute compliance with such requirement.

To the extent any United States federal or state law or other United States legal authority governing the disclosure or use of Confidential Information, including personal data or non-public personal financial information ("Personal Data or Non-Public Personal Financial Information Law") requires a Disclosing Person and/or Receiving Party to obtain a subpoena or court order before disclosing any Personal Data or Non-Public Personal Financial Information, in light of the protections provided for in this Order, the volume of documents to be produced and the ongoing oversight of the Court, this Order shall constitute an express direction that the Disclosing Person and/or Receiving Party is exempted from obtaining such court-ordered subpoena, having to notify and/or obtain consent from any person or entity prior to the disclosure of Personal Data or Non-Public Personal Financial Information, and/or having to provide a certification that notice has been waived for good cause. To the extent that any Personal Data or Non-Public Personal Financial Information Law requires that any person or entity be notified prior to

disclosure of Personal Data or Non-Public Personal Financial Information except where such notice is prohibited by court order, this Order shall constitute an express direction that Disclosing Persons and Receiving Parties are prohibited from providing such notice in the Action; provided, however, that this Order shall not prohibit any Disclosing Person and/or Receiving Party from contacting any person or entity for any other purpose. Any Disclosing Person or Receiving Party may seek additional orders from the Court that such Party believes may be necessary to comply with any Personal Data or Non-Party Financial Information Law.

6. U.S. Bank also asked counsel to the Oversight Board to include language in the Revised Proposed Order stipulating that any pleadings, motions, objections, and oppositions, responses and replies thereto, or any document or paper filed before the court, containing confidential information shall be filed under seal absent other agreement or order of the Court, after notice to all relevant parties. In the event of a dispute over releasing confidential information, the relevant parties should meet and confer about the dispute, and reserve their right to come back to the Court for further relief, if necessary.

7. U.S. Bank respectfully reserves the right to request that the Oversight Board or Puerto Rico reimburse U.S. Bank's reasonable costs, including fees and costs of outside counsel, associated with these expedited searches, particularly in light of the Oversight Board's pending motion regarding equitable tolling which may moot the purpose of this exercise.

WHEREFORE, U.S. Bank respectfully requests that any order granting the relief requested in the 2004 Motion be conditioned on incorporating the provisions outlined in paragraphs 5, 6 and 7 above regarding (i) rolling timing of production, (ii) protection of privacy, confidentiality, and exculpation of the banks for disclosure of information mandated by court order, and (iii) that any order include a provision reserving the right of the Objecting Parties to seek reimbursement of reasonable costs, including fees and costs of outside counsel, associated with these expedited discovery requests, and such other relief as this Court may deem appropriate.

**RESPECTFULLY SUBMITTED**, in San Juan, Puerto Rico, on this 16th of April, 2019.

We hereby certify that on this same date we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system of the U.S. Bankruptcy Court for the District of Puerto Rico for Case No. 17-BK-3283, which will send notification of such filing to all counsel of record participating in the CM/ECF system.

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